# LEGISLATIVE COUNCIL.

THURSDAY, 16TH NOVEMBER, 1950

The Council met at 2 p. m., His Excellency the Governor, Sir Charles Woolley, K.C.M.G., O.B.E., M.C., President, in the Chair.

## PRESENT:

The President, His Excellency the Governor, Sir Charles Campbell Woolley, K.C.M.G., O.B.E., M.C.

The Hon. the Colonial Secretary, Mr. J. Gutch, O.B.E.

The Hon. the Attorney-General, Mr. F. W. Holder, K.C.

The Hon. the Financial Secretary and Treasurer, Mr. E. F. McDavid, C.M.G., C.B.E.

The Hon. Dr. J. A. Nicholson (Georgetown North).

The Hon. T. Lee (Essequibo River).

The Hon. V. Roth (Nominated).

The Hon. C. P. Ferreira (Berbice River).

The Hon. G. A. C. Farnum, O.B.E., (Nominated).

The Hon. D. P. Debidin (Eastern Demerara).

The Hon. Dr. G. M. Gonsalves (Eastern Berbice).

The Hon. Dr. C. Jagan (Central Demerara).

The Hon. W. O. R. Kendall (New Amsterdam).

The Hon. A. T. Peters (Western Berbice).

The Hon. W. A. Phang (North Western District).

The Hon. G. H. Smellie (Nominated)

The Hon. J. Carter (Georgetown South).

The Hon. F. E. Morrish (Nominated).

The Hon. L. A. Luckhoo (Nominated)

The Clerk read prayers.

The minutes of the meeting of the Council held on the 10th of November, as printed and circulated, were taken as read and confirmed.

## ANNOUNCEMENTS

### COLONY'S GIFT TO HOUSE OF COMMONS — APPRECIATION

The PRESIDENT: Hon Members, I have a letter in illuminated form from the Speaker of the House of Commons which I would like to read:

> "Upon the occasion of the opening of the New House of Commons, it is the unanimous wish of all Members that I should convey to the Government and People of British Guiana, an expression of deep and sincere thanks for the set of four silver-gilt inkstands, which, so generously presented to the House, will be a constant reminder of the close and abiding link between this country and British Guiana. No Speaker could have had a more pleasant duty to perform and I am particularly happy that it should have fallen to me to carry out the wishes of the House.
>
> (Sgd.) DOUGLAS CLIFTON BROWN,
> Speaker.
> 26th October, A.D. 1950."

I propose to have it suitably framed and placed in this Chamber. I think that would meet with the approval of Members of Council. (Applause).

### PAPER LAID

The COLONIAL SECRETARY laid on the table the following document:—

The Report of the Census of British Guiana for 1946.

## GOVERNMENT NOTICES.

### INTRODUCTION OF BILL

The ATTORNEY-GENERAL gave notice of the introduction and first reading of a Bill intituled

"An Ordinance further to amend the Firearms Ordinance, 1940, with respect to the Registration of Firearms' Dealers and for the matters connected therewith"

## ORDER OF THE DAY

### DOGS BILL

The ATTORNEY-GENERAL: We have already taken the second reading on the last occasion of the Bill intituled —

"An Ordinance to render the owners of dogs liable for injuries done to cattle by dogs; to provide better protection from dogs and for purposes connected therewith."

It was then suggested that some of the legal Members of Council should meet me and discuss this matter. Those hon. Members met me on Saturday morning and as a result, when we go into Committee I will put forward an alternative proposal for the approval of this Council. I beg to move that the Council move into Committee to consider this Bill clause by clause.

Dr. NICHOLSON seconded.

Question put, and agreed to.

Council in Committee.

Clause 2 — **Interpretation.**

Mr. ROTH: I think, it would be advisable to include "poultry" in this clause. I do not think that we should delete the word "cattle" altogether. We are advancing a little ahead.

The ATTORNEY-GENERAL: While it is true that in an amending Act in England "poultry" was included, on reflection hon. Members will appreciate the fact that conditions here are somewhat different, and to include it in the definition of "cattle" would make it extremely difficult for those who rear poultry. I think, hon. Members would realize that the conditions are different. You have many cases of people keeping a few chickens and they just stay on the roadside to get grass. To add "poultry" to this it will be somewhat creating a difficulty for those owners.

Mr. LUCKHOO: I would observe that in the definition "cattle" swine is included. May I point out that in the Pounds Ordinance, Chapter 93, section 7, there is specific provision whereby "the owner or person in possession of any private premises or land may destroy all swine straying or trespassing thereon". It would appear that as the owner of land can destroy by whatever means he is so disposed to employ any swine trespassing on his land, the dog may be one of the means used in the destruction of the swine. May I suggest that in the definition of cattle the word "swine" be omitted?

The ATTORNEY-GENERAL: While that is true so far as the Pounds Ordinance is concerned, yet at the same time it does not alter the position so far as what this Bill seeks to effect. All that this Bill seeks is to remove the necessity of proving "scienter". What hon. Members have brought to the attention of this Council is that in as much as it is sought to remove it in regard to cattle it should also be removed in regard to human beings, and the dog should not be permitted to have a first bite in regard to human beings and not in regard to cattle. So far as the ordinary Common Law stands the position should remain the same, particularly having regard to the alternative draft which I have circulated to hon. Members.

Mr. LEE: The hon. the Seventh Nominated Member (Mr. Luckhoo) is only thinking of swine trespassing on land but, perhaps, he has not taken into consideration swine trespassing on any other place in which both the swine and the dog are trespassers, in which case there will be "scienter" which we are trying to avoid.

The CHAIRMAN: To include "swine" as it stands at present does not affect the Pounds Ordinance which is operative. I do not see there is any point in not including "swine" in this particular case where the swine is not trespassing. If you cut it out, the swine would not be pro-

tected from the dog unless it is trespassing. I think we must leave "swine" in the definition.

Mr. DEBIDIN: I notice the point of the hon. the First Nominated Member (Mr. Roth) is not supported. I would like to support what he has said, and what I have to say will meet the case raised by the hon. the Seventh Nominated Member too. There are cases where domesticated birds, which include ducks and even swine, may be lawfully grazing in a pasture in which a dog may enter and not only harass the birds but the swine and any other animals in the pasture. The owner of that dog should be made liable for any injury to the birds, cattle or swine. For that reason I am going to urge that in the definition here not only "swine" should remain but it should go further to include cows. I notice that has not been put. The point I wish to raise is that where a definition reads in the way this one does, it precludes and excludes everything else than those mentioned, unless the definition of "cattle" is given elsewhere in our Interpretation Ordinance.

The CHAIRMAN: I do not think so. Bulls, cows, oxen, heifers, steers and calves all come within the generic term "cattle". That is commonly accepted. This is only extending the generic term "cattle" to include horses, mules, asses, sheep, goats and swine. I do not think there can be any question about that.

Mr. DEBIDIN: We know what "cattle" should mean, but when we are laying down a definition for the purpose of this Ordinance, it seems that to exclude any kind of animal is not to mention it in this definition. This is a specific Ordinance and, I think, this definition should be wide enough, if we are giving it a definition, to include all animals under the definition of "cattle".

The CHAIRMAN: I think the hon. Member may then say we should define "owner" in the Ordinance. "Owner" is a generic term well understood. I think he is wrong in saying that the definition is not wide enough.

Mr. ROTH: I beg to move the addition of a further definition to the clause to include fowls, ducks, geese, turkeys and guinea fowls.

Mr. DEBIDIN: I certainly would add to the amending clause3 (1) "domesticated bidrs". I do not think we should say anything more than that. With all respect I am going to urge very strongly that the word "cattle" should include "birds". It stands in a different connotation to the word "owner"; it does not bear the same analogy.

The CHAIRMAN: Has the hon. Member seen the English Act? It is there.

The ATTORNEY-GENERAL: This is taken from the Dogs Act of 1906. The definition of "cattle" as we have it here, is the same as in that Act, and then later on we have bulls, cows, oxen, heifers, steers and calves coming within the generic term "cattle". The hon. Member will appreciate the fact that the definition is extensive. It extends the ordinary meaning of the word "cattle" as ordinarily understood to include animals which normally do not come within the term "cattle". Horses, mules, asses, sheep, goats and swine are brought by way of the Statute into the term "cattle" to prevent the repetition of cattle, horses, sheep, goats, etc., in the various sections of the Act. So the definition gives one term "cattle" and provides that that term should include all those other things which normally do not come within the term "cattle". So when in any other section you speak of "cattle", you mean cattle as normally understood, and in addition those other animals which are added by way of the definition. Therefore. I wish to emphasize the word "includes", which is the important word and which shows you the force of the argument that "cattle" includes all those other words added in the definition for the purpose of the Ordinance.

Dr. GONSALVES: I am supporting strongly the amendment moved by the hon. the First Nominated Member (Mr. Roth), because here of late quite a few people have been attacked by dogs and were told to institute their own action, and in some cases they were not in a position to do so. I think, therefore, this timely introduction will assist very much.

The ATTORNEY-GENERAL: In

answer to the last hon. Member who has spoken, it will be seen that the alternative clause is worded :

> "In any proceedings for damages against the owner of a dog for injury done to any person or to any cattle by that dog, it shall not be necessary for the person seeking such damages to show a previous mischievous propensity in the dog, or the owner's knowledge of such previous propensity".

So that point is covered by the proposal. The only other point is the question of including the word "poultry". Poultry, I may say, is a very wide term, At what point must we stop? In the Poultry Ordinance "poultry" is defined as "domestic fowls, turkeys, geese, ducks, guinea fowls and pigeons".

Mr. DEBIDIN: Why not say "poultry"? A person may have a flamingo, or a currie-currie, or a parrot, and they will hardly come under the definition of "poultry" if they are domesticated birds. It is sufficiently inclusive.

The ATTORNEY-GENERAL: "Domesticated bird" is rather a difficult term.

The CHAIRMAN: It is very difficult to say what a domesticated bird is.

The ATTORNEY-GENERAL: If it is the general view of the Council that "poultry" should be added, the only method by which it should be added is by definition.

Further consideration of the clause was deferred to enable the hon. the Attorney-General to consider an amendment to provide for the inclusion of poultry.

Clause 3—*Liability of owner of dog for injury to cattle.*

Mr. ROTH: I move that after the word "cattle" in the alternative amendment the words "or poultry" be added.

The ATTORNEY-GENERAL: That depends on how the definition is framed., In other words, if it is framed that "cattle" includes "poultry" then it will come under the term "cattle".

Mr. ROTH: If you are going to include "poultry" in the definition I would withdraw my amendment.

The CHAIRMAN: I think the Council agree that "poultry" should be put in. Then the Attorney General will have to say what "poultry" is.

Mr. ROTH: In that case I withdraw my amendment.

The ATTORNEY-GENERAL : In other words, this seeks to remove the doctrine of "scienter" so far as dogs interfering with cattle, including poultry and human beings, is concerned.

Mr. LUCKHOO: Clause 3 (1) will have to be consequentially changed. It will have to read "Any person or cattle .....", because person is now being included.

Alternative sub-clause (1) agreed to.

Mr. DEBIDIN: I would like to be quite clear on the proviso to sub-cluase (2), that we add the words appearing in the last part of the sub-clause—"unless he proves that he was not the owner of the dog at that time"—again. I think it should be repeated over in the proviso.

The ATTORNEY-GENERAL: It is presumed in the absence of any definition to the contrary.

Mr. DEBIDIN: In the sub-clause the liability is followed by a qualification, and in the proviso you have the same liability without the qualification. It may give a Magistrate the opportunity to interpret that proviso as fixing liability where there are separate persons occupying a house on the person occupying that part where the dog is found. As soon as we leave out that qualification it is making a difference.

The CHAIRMAN: The hon. Member suggests that the last 15 words in sub-clause (92) be added to the proviso. That can be done.

Mr. LEE: I do not agree with the hon. Member. It is a presumption, as the

hon. the Attorney-General points out. You are only presumed to be the owner unless proven otherwise and, therefore, your presumption is only assumed to the Magistrate. Why you want it in the proviso?

The ATTORNEY-GENERAL: It may be done for uniformity.

The CHAIRMAN: If it is in sub-clause (2), I do not see why it should not be in the proviso too.

Amendment agreed to.

Sub-clause (2) as amended put, and agreed to.

Mr. DEBIDIN: Would not sub-clause (3) be out of text in view of the amendment in sub-clause (1) and what follows? Should that not be put in clause 4 either at the beginning or the end?

The ATTORNEY-GENERAL: The point which arises in regard to this is: Hon. Members raised the point on the last occasion that a dog may remain on its master's premises and stray cattle may trespass on its master's premises; it may be trained to chase cattle out of the premises. The question arises whether it is a dangerous dog. I answered the point on the last occasion by saying that it is a question whether the dog itself is a dangerous dog and not whether it has bitten persons or cattle on its own premises; whether it can be allowed to bite six or seven persons or cattle on its own premises and then when it goes across the road five yards away it bites one or two to become a dangerous dog. I hope hon. Members see that to distinguish mischievous propensity or dangerous quality will depend on where the dog is when it does the biting. I agree that a dog has the right to defend the sanctity of its master's land or property.

Mr. DEBIDIN: I raised the point that sub-clause (3) bears no relation to what appears in sub-clause (1) of clause 3. Clause 4 deals with the destruction of dangerous dogs. I would suggest that another clause may be added after clause 4 to provide that the procedure in respect of a complaint shall be the same as that provided in the Summary Jurisdiction Ordinance.

The CHAIRMAN: Is the hon. Member suggesting that sub-clause (3) be re-numbered clause 4?

Mr. DEBIDIN: Or that it be re-numbered 4 (1) and clause 4 be re-numbered 4 (2).

The ATTORNEY-GENERAL: The whole point was that clause 3 has regard to injury to cattle. It deals with the conclusion to be drawn from the behaviour of the dog.

Mr. ROTH: Surely it would be necessary to include persons under sub-clause (3).

The CHAIRMAN: Yes. Sub-clause (3) as amended will be re-numbered as clause 4 (1) and clause 4 will be re-numbered as clause 4 (2).

Council resumed.

The ATTORNEY-GENERAL: I beg to report progress and ask leave for the Committee to sit again tomorrow to resume consideration of clause 2 of the Bill.

Agreed to.

## MATRIMONIAL CAUSES (AMENDMENT) BILL, 1950

The ATTORNEY-GENERAL: I beg to move the second reading of a Bill intituled:

> "An Ordinance to amend the Matrimonial Causes Ordinance with respect to the dissolution of marriage and for purposes connected therewith."

This Bill, as hon. Members see, seeks to introduce certain amendments to the Matrimonial Causes Ordinance, Cap. 143. Clause 2 of the Bill is based upon sections 1 and 2 of the Matrimonial Causes Act, 1937, and hon. Members will recollect that that Act came into operation in England on the 1st of January, 1938. Clause 3 of the Bill is adapted from section 3 of th same Act. The object of clause 4 is to enable a wife, who has been deserted by her husband, to present a

petition for divorce upon that ground if, immediately prior to her marriage, she was domiciled in the Colony. It is considered that such a measure would obviate much hardship, as at present the jurisdiction of the Court in divorce only extends to cases where the petitioner is domiciled in the Colony, and a wife acquires the domicile of her husband. This measure would enable a wife, whose husband is not domiciled in the Colony, to take proceedings for divorce where she has been deserted by him, if she was domiciled in the Colony before her marriage.

Clause 5 (a) seeks to reduce the period between a decree *nisi* and the decree absolute to six weeks, as is the case in England by virtue of the Matrimonial Causes (Decree Absolute) General Order, 1946, dated July 31st., 1946. Clause 5 (b) enables the party against whom a decree *nisi* has been obtained, to apply for the decree absolute where the party in whose favour the decree has been made fails to apply for the decree to be made absolute. Clause 6 is consequential to clause 5 (a).

I am sure that a Bill of this nature will commend itself to hon. Members. There is, I believe, one aspect of the Bill with regard to which there is some controversy, and that is the part which deals with desertion. I would point out to hon. Members that as far back as 1946 the Christian Social Council wrote a letter pointing out that the divorce law of the Colony needed amendment, and in 1946 the late Mr. Justice Luckhoo from the Bench made the comment that the divorce law of the Colony was too easy. As hon. Members are aware, in England in 1946 the Lord Chancellor appointed a Committee to examine, among other questions, the present administration of the law of divorce— whether the period between a decree *nisi* and the decree absolute should be reduced from six months to six weeks. That resulted in the introduction of the Matrimonial Causes (Decree Absolute) General Order to which I have referred, which was dated 31st July, 1946.

With regard to the main point in the Bill, the question of desertion, I would point out that some time in 1936, in the case of *Matthews v. Matthews,* Mr. Justice Verity (now Sir John Verity) said:

> "There does not appear ever to have been reported a comprehensive definition by the Courts of the Colony of the term "malicious desertion" but consideration of cases decided in the Courts of South Africa and Ceylon gives assurance that under the Roman Dutch system of law from which this ground for divorce has been adopted, and to which one may rightly refer for guidance in this regard, malicious desertion must at least include a deliberate, definite, and final repudiation of the marriage state by one spouse against the will of the other and without just cause or legal justification."
>
> "The existence of this determination on the part of the deserting spouse may be deduced from conduct of varying kinds, but that its existence must be proved or properly inferred from the evidence is essential if it be desired that the Court should dissolve the marriage on this ground.
>
> "The Court will not lightly determine the marriage bond where there is no clear and convincing evidence of such final repudiation, nor by its decree will the Court convert into final dissolution what may well be but a temporary withdrawal, the result of hasty disagreement or misunderstanding."

I should like to emphasize this portion of Mr. Justice Verity's decision in which he wrote:

> "It may be desirable that the law should prescribe, as in the case for petitions for judicial separation, some period beyond which alone could such a petition as the present be brought, not with the object of substituting statutory desertion for malicious desertion, but for securing a reasonable period within which the erring spouse might have time for consideration and the aggrieved spouse have opportunity for seeking by every means just reconciliation. This is a view which in my opinion might well receive consideration in the proper quarter...."

I suggest to hon. Members that this is the proper quarter, and now is the opportunity. That was a pronouncement from the Bench of a former Chief Justice of this Colony, and I would point out that if, as is the case, there is a statutory period of two years under section 3 (1) of the Matrimonial Causes Ordinance,

Cap. 104 with respect to judicial separation, it is reasonable and logical, I suggest to hon. Members, that the period with respect to divorce should be longer. For that reason the Bill seeks to make the period three years to provide the **locus poenitentiae** to enable the parties to compose their differences and not to go to the †Court and put an end to their marital ties. It is hardly necessary for me to emphasize the fact that it is not only the parties to the marriage to be considered but also their children, who very often suffer as a result of the breach and final determination of the marriage relationship. Therefore, I would emphasize to hon. Members that by the same token as the Parliament in England found it necessary in 1937 to provide a period whereby estranged spouses could think over matters and compose their differences, so in this Colony I think this is equally desirable, if not more so. Section 2 of the Matrimonial Causes Act (1937) of England provides :

> "2. The following section shall be substituted for section one hundred and seventy-six of the Supreme Court of Judicature (Consolidation) Act, 1925 (hereinafter called "the principal Act "):—
>
> "176. A petition for divorce may be presented to the High Court (in this part of this Act referred to as "the court") either by the husband or the wife on the ground that the respondent —
>
> (a) has since the celebration of the marriage committed adultery ; or
>
> (b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition ; or
>
> (c) has since the celebration of the marriage treated the petitioner with cruelty ; or
>
> (d) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition ;
>
> and by the wife on the ground that her husband has, since the celebration of the marriage, been guilty of rape, sodomy or bestiality."

Hon. Members will see that in taking this step to enlarge the time by fixing a period of three years as a **locus poenitentiae** to enable parties to perhaps see reason and to be persuaded to live together peaceably and not take proceedings in the Court, we are not doing something that is new, but we are following a line which was found to be necessary, and which, after due deliberation and careful thought, was incorporated into the Law of England. I do not think it is necessary at this juncture for me to say anything further, because I feel that the Bill as a whole will commend itself to all hon. Members as a very necessary step in the social life of the Colony. I formally move that the Bill be now read a second time.

Dr. NICHOLSON seconded.

Mr. DEBIDIN : I have listened with very great attention to what the hon. the Attorney-General had to say, and one thing is quite obvious from what he has said, and that is that he anticipates opposition in so far as the grounds for divorce are concerned. I speak with the entire legal profession behind me in this matter. I have had the opportunity of speaking with almost every member of the profession. As a matter of fact many of them, including one or two learned silk, have approached me and asked me what I intended doing — whether I would not oppose the Bill in so far as it relates to malicious desertion as a ground for divorce. It is true that everywhere in the world access to the Courts for dissolution of marriage has been made easier and the grounds for dissolution of marriage have been made far greater in number as well as easier in their nature. Gone are the days when people had to depend upon ecclesiastical canons for dissolution of marriage. In this Colony we have for the past 34 years been basing the grounds for dissolution of marriage upon section 9 of the Matrimonial Causes Ordinance, Chapter 143, which reads :

> "9.—(1) Any husband or wife may present a petition to the Court praying that his or her marriage may be dissolved, on the ground that his wife or her husband has since the solemnisation thereof been guilty of adultery, or malicious desertion with or without adultery."

In other words, for the past 34 years we have been accustomed to go to the Courts of our Colony and urge either one of two simple grounds — malicious desertion or adultery — for a dissolution of marriage. In my limited experience of about a dozen years I have been able to follow decisions which have been given upon this particular section, and in my humble opinion, which I believe is shared by other legal Members of this Council, and those outside, there has been no difficulty whatever in so far as the divorce law of this Colony is concerned. The ground of malicious desertion, which the Bill seeks to wipe out completely from our divorce law, is a very important ground in that it relates back to the old Roman-Dutch Law practice. We in this Colony have held very dearly to some of the relics of the Roman-Dutch Law practice. I refer particularly to the method of obtaining transport which has been commented upon by West Indian Judges and other jurists who have visited this Colony, as being an excellent practice, and I think it would cause a furore in the community if any attempt was made to change that system of conveyancing. The same objection applies to the proposal to abolish malicious desertion as a ground for divorce. I am therefore asking Members to consider the points which I will advance against the argument adduced by the hon. the Attorney-General for the introduction of an English practice which has been amended. The Matrimonial Causes Ordinance, Chapter 143, states quite clearly the origin of this particular practice. Section 2 provides :

> "2. Subject to any Ordinance, the Supreme Court (hereafter in this Ordinance called "the Court") shall exercise all jurisdiction in respect of divorces and other matrimonial causes and disputes, and in respect of declarations as to the legitimacy of a child, and as to the validity of any marriage under this or any other Ordinance or under the common law, in as full and complete a manner as it has hitherto exercised jurisdiction in divorce and matrimonial causes under the Roman-Dutch common law, and that jurisdiction shall as far as possible be exercised in the same manner and in accordance with the same principles and rules as jurisdiction in those matters is exercised by the Probate Divorce and Admiralty Division of the High Court of Justice in England, subject to any rules of Court made under this Ordinance of the Supreme Court of Judicature Ordinance, or any amending Ordinance, hereafter in this Ordinance called "the rules."

In other words this very Ordinance makes very important reference to the practice and the jurisdiction of the common law being carried on in the matrimonial jurisdiction of the Courts of this Colony. In that jurisdiction of the Courts of this Colony we are governed by a set of Rules known as the Matrimonial Causes Rules, by which a definite procedure is laid down as to how petitions for divorce are to be presented on the two grounds of malicious desertion and adultery. The Rules also relate to petitions for judicial separation and restitution of conjugal rights. It seems to me that if we are going to attempt to disrupt what has been the foundation of a well established practice in this Colony, which has never been complained against, we must wipe out the entire Matrimonial Causes Ordinance and Rules and introduce by one single clause the Common Law of England as it relates to matrimonial causes, but I think the hon. the Attorney-General is too cautious a man to attempt such an innovation. If he would not do that then I am asking this Council to consider the wisdom of just changing the law in respect of one particular type of proceeding for divorce. As is the case in England, we have developed case law on this question of malicious desertion as a ground for divorce. What is this malicious desertion we are dealing with ? The Attorney-General has referred to the leading local case of **Matthews v. Matthews** in which Chief Justice Verity clearly reviewed the law on the point and also laid down what he considered a true interpretation of malicious desertion. With your permission, Sir, I will read a passage to be found at page 460 :

> "Nevertheless it is in accordance with what I conclude to be the fundamental principles of the Divorce Laws of this Colony that the respondent should be shown by evidence of his or her conduct definitely to have reached a final determination to repudiate the obligations of the marriage state, and also that it should be shown by evidence of the petitioner's conduct that such repudiation is against his or her

will. While, therefore, it is not required by the Laws of this Colony tha there should be any defined period of desertion nor that legal proceedings should have been instituted to secure either the return of the deserting spouse or refusal of return in obedience to an order of the Court, yet in many cases the element of time will be one for consideration in ascertaining whether or not the desertion is in fact evidence of final repudiation. The efforts of the petitioner to secure or afford opportunity for the return of the respondent, moreover, will be for consideration in ascertaining whether or not the withdraw is against the will of the petitioner. It is in accordance with these principles that I approach consideration of the facts in the present case."

He has, in other words, laid down the principles which govern the practice for presenting a petition to the Courts for dissolution of marriage on the ground of malicious desertion. There are other decisions before this, but he has laid down a decision which every lawyer refers to as being the decision which relates and gives the fullest definition of the term "malicious desertion". In my own opinion, if two parties are married together and at some stage in their lives it is found impossible for one to live with the other, they realize they have never loved each other and one of them has transferred his or her affection to someone else —let us say the woman; you cannot prove adultery but you know that the wife has transferred her affection to someone else, and efforts have been made by the husband in vain to get the wife to live a proper married life — it is clear that the wife has put an end to the marriage state. There is no hope whatever of their living together. Under the Laws of our Colony the husband can present a petition to the Courts without having to wait for two or three years, as in this case three years, to present a petition. The husband can present a case immediately and he will have to prove to the Court, according to the decision of Chief Justice Verity, that there was an intention on the part of the wife to repudiate the marriage tie and that he has made every effort to bring everything together to normalcy so far as their married life is concerned but it was hopeless and, further, there seems no likelihood of the marriage being a successful one in the future. In those circumstances and in the interest of the children, if there are any, it is best that the marriage be dissolved and the custody of the children placed in proper authority for their proper upbringing. That is the practice.

We are not forced to wait for any time. If we have to wait for any time what may happen? The husband by force of circumstances may commit adultery, and the wife will have an opportunity at some stage later to mulct an unfortunate person as co-respondent, or on the other hand because of the parties being apart the wife may commit adultery with some man and the husband can bring an action for damages against that person. So what is intended is to avoid immorality, to avoid anything that offends against the religious tenets in force. It seems to be an imposition on the people to ask them to wait three years before a petition can be presented. On the other hand, I must not overlook the fact that there is a proviso where you can go earlier to the Court; but then may I urge that proviso means double cost and double presentation? First you are to have leave to bring forward the petition. I do not know what decisions there are on it, cases of exceptional depravity on the part of the respondent. Take the example I have given. It may not be a case of exceptional depravity on the part of the wife that the marriage was not successful, and the Court may say that you are out of Court. There is something that must be mentioned. A petition for divorce cannot be presented unless you have both Barrister and Solicitor engaged. It is one of the most costly proceedings in our Courts of Law. If this is going to be an imposition in having first to present a petition to the Court for leave to present the petition for dissolution of marriage before the three years period is over, this duplicity of proceedings is something that will prevent a petitioner from proceeding. He may say "I am going to remain for three years". As a result everything, I respectfully submit, will go to the dogs. There will be a marriage state but without any proper guidance and with an opportunity for immorality to creep in.

I would urge that in our Colony we have a system of procedure in respect of malicious desertion which is a very happy one for many reasons. In the first place, we avoid the washing of our dirty linen in the Courts. Your petition is presented and the worst may have happened in the married life but the erring spouse may not defend and the petition is heard **ex-parte**. For that reason I say it is very useful that the period of six months to get a decree absolute should be reduced to six weeks, showing again the tendency to make things easy for petitions for dissolution of marriage. That is a point which we have to consider, the avoidance of what occurs in other countries where one's dirty linen is washed in Court. If you have to wait for three long years to obtain a dissolution of marriage — and this has been known to be the case in England and other countries — there may be staged what is known as the hotel stunt in which a man goes to a hotel and then somebody is taken there and there is a frame-up of adultery. Perjury might be committed to establish adultery where actually adultery has not taken place. I think, if there is anything that would offend the ecclesiastical laws, that would. There is no doubt that people will try to bring cases for adultery because they will not have to wait very long to present their petition to the Court. And more than that, you will have what is not to be recognized or supported by any law or decent community — connivance and collusion all the time. Two parties cannot hit it off and their marriage has broken down. That seems to be something inevitable in these days. Parties will connive and collude to bring forward a petition and urge the worst things against the other so that the marriage can be dissolved. There you have not only the tendency or possibility of perjury being committed. You are going to lend assistance to connivance and collusion and further to perjury in every petition for dissolution of marriage. The affidavit has to state clearly that there has been no connivance or collusion between the parties, but we know that much of that is now being done. How much more would it be done in the future to bring the cases within the adultery ground. I feel sure that legal Members of this Council will give support to what I am saying.

I feel sure that due regard will be given to this Roman-Dutch law relief which we feel proud to have in our midst, and let us not divorce ourselves from this landmark in the history of our Colony. It is as great a landmark as any of the memorials which we see around the City of Georgetown. As I have said, the practice has resulted from the Roman-Dutch law relic of which we, lawyers practising in the Courts, are proud. We are satisfied with it and it has no comparison with the English practice for the dissolution of marriage. We feel sufficiently satisfied to have it retained, even if other things are introduced from the English practice. If the hon. the Attorney-General wishes he can have clause (b), but certainly I would move an amendment to clause (a) for the insertion of the words "or has been guilty of malicious desertion with or without adultery", thus introducing the phrase found in section 9 of Chapter 143. In other words, you are retaining the practice of malicious desertion in this Colony. It is something to meet what this Council should be very slow to change. It is not the English practice we are changing, but it is a practice which has a certain amount of sentiment, a certain amount of usefulness in this Colony, and we ought to be slow to change it. In the very decision in the case of Matthews and Matthews by Chief Justice Verity it is stated:

> "The efforts of the petitioner to secure or afford opportunity for the return of the respondent, moreover, will be for consideration in ascertaining whether or not the withdrawal is against the will of the petitioner...."

In other words, this presupposes the petitioner made several efforts to get them together before making the petition, and when he has failed completely there is definite wilful repudiation of the marriage tie and he has the right to present a petition for malicious desertion. The question of children suffering as a result cuts both ways. The children will suffer worse if a bad marriage contract is kept on; the ensuing nagging and other things will give a bad impression to the children.

I think it would be better in such circumstances that the parties should part and a clean atmosphere presented to the children at an early stage of their life.. I feel sure the Court must be given the fullest credit, and here again we come to the other point in answer to the hon. the Attorney-General. We have to place reliance on our Courts. Our Judges must be given the fullest credit for exercising their discretion and their judicial functions properly, and I hesitate to think that a Judge in examining the contention of the parties will not see whether it is a case of hasty withdrawal or step to put an end to the marriage tie. Under our present law the Judges know what measurement of the law they are guided by in determining whether it is the best judgment for a dissolution of the marriage. Let us give them credit that they are not going to contribute to what may lead to immorality but will exercise their discretion in determining whether it is a wilful or hasty withdrawal from the marriage tie. That is our safeguard, and we must give the Judges of our Colony some amount of responsibility in safeguarding whatever is to be safeguarded in this new Bill which is being introduced. I do trust hon. Members will consider carefully before they wipe away what is a very sentimental practice in our land. I feel sure they will give the necessary support to what I have said.

Mr. LUCKHOO: The hon. Member has dealt very exhaustively with this matter and I do not propose to reiterate many of the points he has made, but may I observe that a Bill with so many needful features it seems regrettable that one has to criticize this contentious clause 9 (b) in it. A divorce petition is presented in this Colony by means of a petition to the Court, and it is the conscience of the Court which has to be satisfied before a *decree nisi* is made. That is a very strong point, I urge, in favour of the retention of the system as presently obtaining, whereby the conscience of the Court must be satisfied that this state of malicious desertion is one which justifies the granting of a **decree nisi.** That, Sir, is the safeguard and that is the solution, I suggest, to the problem which has been offered by the hon. the Attorney-General. In the Bill in its present form one can foresee many difficulties. Let me illustrate one. A person who has been married for many years, over a period of 8 or 9 years, encounters unfortunately difficulties in his or her matrimonial life whereby it is impossible to continue living together with the other partner. As the Bill stands, there will have to be a period of three years immediately preceding the presentation of the petition whereby the period of desertion must run. There is an apparent safeguard in the proviso, but that appears to me at this stage a trifle ambiguous as to whether the three years past refers to three years of marriage or three years prior to the desertion. One can also envisage cases where over a long number of years people have been not living together as man and wife and there have been justifiable and fair attempts made to come together and make good of the situation, yet despite these had failed they will have to wait for this period of three years preceding the presentation of a petition for divorce.

I agree with my hon. Friend who has just taken his seat that this situation will lead to the presentation of fake evidence and maybe the committing of perjury, whereby people will create situations to provide the necessary evidence upon which they may obtain dissolution. In the hon. Member's exhaustive survey of the position he has made many points which I will not reiterate, but I will urge on the Council the fact that the conscience of the Court has to be satisfied that every endeavour has been made for the purpose of getting the parties together. I have known of undefended cases where the Court of this Colony has refused to grant a **decree nisi** because the conscience of the Court was not satisfied. I do feel that with the exception of that particular clause the remainder of the Bill would commend itself on the face of it to Members.

Mr. SMELLIE: The last two speakers concentrated on this debatable clause. I agree with a great deal of what they have said. Apparently the only reason for introducing this amendment is because it obtains in the English law, but the Objects and Reasons are particularly silent on that point. What I mean to say

by that is, the Objects and Reasons in regard to clause 4 are given *in extenso* but in regard to clauses 2 and 3 are particularly meagre, and I am driven to the conclusion that they obtain in the English law. What I would like to know, is, how it has worked in the English law, whether in point of fact it has or has not resulted in what has been termed a state of unholy wedlock, where in point of fact collusion and fake evidence of adultery is rife as a result of three years being the minimum in which a petition for dissolution of marriage can be presented. Until I am satisfied that the law in this particular instance has worked well in England, I shall have to oppose that particular amendment.

Mr. LEE: I desire to support the proposals in respect of this clause of the Bill which the hon. Member for Eastern Demerara and the hon. the Seventh Nominated Member have put forward. They have put the legal aspect before this Council and I desire to emphasize them. But I would also like to say in answer to the hon. and learned the Attorney-General that if parties petition the Court on the ground of malicious desertion they can after obtaining the **decree nisi** re-marry. I know of more than one case in this Colony in which the **decree absolute** was granted and the parties are again married. So the question of giving time for reconciliation is only a sort of red herring being drawn across the trail in respect of a dissolution for malicious desertion. As the hon. the Nominated Member said, it is entirely at the discretion of the Court and the conscience of the Judge, and there are cases where the Court has refused to grant a *decree nisi* when it is not satisfied. I certainly would ask the hon. the Attorney-General and the Government not to force this change in the law.

Dr. GONSALVES: I am not of the legal profession, but I heartily support the objections raised to clause 9 (b) by the hon. Member for Eastern Demerara and the hon. the Seventh Nominated Member and because of my actual experience in respect of the obtaining of fictitious evidence. I know that to be actually so. It may not be rife in this Colony because it is a small community, but in large countries private detectives are engaged to do hunting in order to produce evidence that will be satisfactory to the parties.

I think it was an American Judge who said that when two people reach the stage of trying to have their marriage dissolved, patching up has been successful in such a small percentage of cases that it is a waste of time attempting to bring that about. I am not in a position to say that. It has been explained by legal Members that not until the conscience of the Court is satisfied that a divorce is granted. I was particularly touched about the point made about the obtaining of fictitious evidence, because it has happened in the case of parties I actually know. It is not unusual for private detectives to be engaged to follow a wife or a husband and to obtain some sort of evidence. It happens even in England. Not being legally trained I see no objection to this clause being amended to a considerable extent which would bring about the satisfaction which we seek. I support the hon. Member's argument.

Mr. PETERS: The hon. the Attorney-General must be commended for his, shall I say, very commendable attempt to seek to preserve the sanctity of the marriage bond in our community and to underpin the stability of family life in our Colony, but I must confess to having rather grave doubts as to whether this is the wisest means to bring about the end that seems to be desired by the presentation of this Bill. Whether my position is invidious or not it is for this Council to say, but I stand astride the Law and the Gospel (laughter). I believe it is my good fortune to have united couples for the past 33 years, and I am rather interested to have heard reference to the case of *Matthews v. Matthews*, because the learned Attorney-General in looking through that case will discover that I was one of the counsel engaged in it. I was counsel for the respondent, so that in speaking on this Bill I can do so with some measure of authority and with a measure of pardonable pride. Under-pinning the stability of the marriage tie in our Colony is more a question of sanctified reasoning than a matter of mere law. We are attempting, merely by changing the law of our Colony, to

tighten up the marriage bond, but it is my considered opinion that what we need in British Guiana is a Matrimonial Court where grave matrimonial problems may be gone into, and wise reasoning on the part of the person ajudicating might prevail.

I may be pardoned for referring to my own experience. There have been many instances in which one spouse or the other whom I had united in holy wedlock may have had good cause to be dissatisfied with the other party and have thought it wise to come to me. After a serious heart-to-heart talk the parties have more often than not gone away very much satisfied, and the thought of breaking up their home forgotten in the long run.

I am afraid that we are training our guns in the wrong direction, even as regards making our divorce law harder in one respect and easier in another. What we need is a Court of Matrimonial Affairs which would certainly provide some prospect of a considerable reduction in the number of divorce cases. This Bill, in my opinion, does not improve the situation as it exists today, because it seems to blow hot and cold at one and the same time. It says in effect that there should be no chance of a person obtaining a decree *nisi* under three years, while at the same time it reduces the period within which a decree absolute can be granted, from six months to six weeks. In other words what is now easy at the beginning is now sought to be made harder, and what is now hard at the end is now sought to be made easier.

Paragraph (c) of clause 2 refers to cruelty as a ground for divorce. I can not but view with some measure of mental reservation the granting of a divorce merely on the ground of cruelty. Even in our law dealing with the maintenance of a wife by her husband aggravated cruelty must be proved. Mere cruelty is not enough, because we would have all sorts of things advanced by a touchy wife or husband.

Then again I do not think we can persuade ourselves that British Guiana has grown up so adult as to measure itself against England, to say that if a husband or a wife has been unfortunate enough to lose his or her mind, the other spouse should be entitled to apply for a decree *nisi* after the lapse of five years. The Bill refers to a person being "incurably of unsound mind" but I think too long a bow is being drawn on this question. Nothing is said as to who is to declare that the person is "incurably of unsound mind". We know of many instances where doctors have pronounced patients "incurable" while others have been able to find a cure. What would be the position if a person who has been declared "incurably of unsound mind" recovers his or her equilibrum as a result of a counter shock, as has happened in many cases? A person may be confined to a mental hospital for 8 or 10 years and may be restored to sanity, let us say by Divine act. What an injustice may be inflicted on such a man who comes out to find that his wife has divorced him and has become the wife of another man, and his children the children of another home? It is a very serious state of affairs to contemplate. This is one occasion when I am not going to allow myself to be pulled into following Great Britain's lead. We would be inflicting great hardship on a husband and treating him as though he had no right to become ill. I say that the Bill is untimely, and in the light of the operation of the divorce law in this Colony I would say that we have to go a long way to find any good cause to have it improved upon. I am not prepared to support the Bill.

The ATTORNEY-GENERAL: The last hon. speaker seems to have been engaged in a conflict with himself, the ultimate result of which is that he does not as a lawyer see any reason for a change in the divorce law which at present obtains in this Colony, despite the fact that he realizes that on many occasions his timely advice, given perhaps in another form of service, has been the means of restoring proper marital relations among people, particularly young people. The point really for the consideration of this Council is whether, having regard to the conditions prevailing in this Colony, and having regard to the comment made by one who undoubtedly had considerable experience of the ways

of the people of the Colony and the litigation that came before the Courts over a long period of years (he was engaged in the case of *Matthews v. Matthews* as the leader of the last hon. speaker) and with that background of experience he made a pronouncement from the Bench that the divorce law of this Colony is too easy and requires tightening up. I refer, of course, to the late Mr. Justice Luckhoo.

In the case of *Matthews v. Matthews* the presiding Judge, Mr. Justice Verity, expressed the view that there should be a fixed period, but he had to administer the law as he found it, therefore he gave his decision along the lines of the law as it obtained in this Colony. Later, in 1946, Mr. Justice Luckhoo made the statement I have referred to which was published in the Press. I would point out to hon. Members that the Committee which was appointed by the Lord Chancellor to consider the procedure in matrimonial causes, made these introductory observations in paragraph 4 of its final report:

> "We have throughout our enquiry had in mind the principle that the preservation of the marriage tie is of the highest importance in the interest of society. The unity of the family is so important that reconciliation should be attempted in every case where there is the prospect of success."

I would suggest to hon. Members that that is the basis from which a question of this nature must be approached. It is not a case of having the Roman-Dutch Law as our background, but that we must have regard to the fundamental basis and structure of our society. That being so every attempt must be made, whether by way of legislation or a Matrimonial Court to which the hon. Member has referred, to provide an opportunity for reconciliation between the parties. Although the hon. Member has suggested that the Bill is blowing hot and cold at the same time, I would point out to hon. Members that that is not the case, because on analysis it will be clearly seen that what is suggested is that before the grave step is taken to present a petition for divorce a time-limit should be imposed so as to enable the parties to come together if possible. There are always well intentioned people who endeavour to bring people together, and a word in season may be of considerable benefit to those parties, particularly when they are young and are very prone to ezaggerate their grievances and go off at a tangent.

That being so, when the question is approached from that point of view it will be seen that this is only an attempt to give the parties an opportunity to reconsider the psoition, their relationship to each other, and perhaps to adjust themselves as time goes on. I am sure it is the experience of hon. Members that it is the early years, when the parties have not yet learned to adjust themselves to each other's temperament, that they drift apart and pull against each other. They do not for some time realize that it is a sort of give-and-take business, and that they must make allowance one for the other before they take such extreme steps as to have a separation, going their own way and finally ending up in the divorce court. If we consider it from the point of view of an opportunity for reconciliation, I suggest to hon. Members that that is the proper approach. It is better to have a fence at the top than an ambulance at the bottom. The idea is to give married people a reasonable opportunity for reconciliation, and when the Court has gone into the whole matter and finally decides to grant a decree *nisi*, when the decree *nisi* is pronounced, rather than have them waiting for six months, a period of six weeks is sufficient time for the decree absolute to be granted. That is the position which this Bill seeks to present to hon. Members.

The hon. Member for Eastern Demerara (Mr. Debidin) has pointed out that our divorce law has a Roman-Dutch background. Of course it has, but the effect of section 2 of the Matrimonial Causes Ordinance, Chapter 143, to which the hon. Member referred, is that what was done before under the Roman-Dutch Law we are doing now under the English Common Law. The section referred to states :

> ".....and that jurisdiction shall as far as possible be exercised in the same manner and in accordance with the same principles and rules as jurisdiction in those matters is exercised by the Probate Divorce and Admiralty Division of the High

Court of Justice in England, subject to any rules of court made under this Ordinance or the Supreme Court of Judicature Ordinance, or any amending Ordinance, hereafter in this Ordinance called "the rules."

I emphasize that part of the section to point out to hon. Members that it is not the case of trying today to follow English procedure and practice. Now as far as the hon. Nominated Member is concerned, he posed the question whether this clause has been introduced merely because it has been introduced in England? It was introduced in England by a private Member because he realized the position as regards divorce, and it was in an effort to stop easy divorce that a Bill was introduced by Mr. A. P. Herbert, as he then was in 1937. At the beginning of the English Act it provided that a divorce petition shall not be presented until three years after marriage. Section 1 (1) of the Act of 1937 provides:

"1.—(1) No petition for divorce shall be presented to the High Court unless at the date of the presentation of the petition three years have passed since the date of the marriage:

Provided that a judge of the High Court may, upon application being made to him in accordance with rules of court, allow a petition to be presented before three years have passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree *nisi*, do so subject to the condition that no application to make the decree absolute shall be made until after the expiration of three years from the date of the marriage, or may dismiss the petition, without prejudice to any petition which may be brought after the expiration of the said three years upon the same, or substantially the same, facts as those proved in support of the petition so dismissed.

(2) In determining any application under this section for leave to present a petition before the expiration of three years from the date of the marriage, the judge shall have regrad to the interests of any children of the marriage and to the question whether there is reasonable probability of a reconciliation between the parties before the expiration of the said three years.

(3) Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters which have occurred before the expiration of three years from the date of marriage."

That was done for the reason that young people are apt to go off at a tangent and pull away from each other. This was to give them a time-limit during which they could cool their tempers and collect a little more reason, so that they may understand each other better. And that was in so far as the presentation of the petition — three years having passed since the date of marriage. What we are doing here in this clause is saying that so far as dissolution is concerned in addition to that you have the three years period. Some people may have a quarrel and on impulse one goes off and spends time away. Immediately after that the wife or husband goes down to see her or his lawyer and ask for a petition for divorce or dissolution. A few weeks pass and the case is filed. That is in general terms what emerges from these quick and impulsive circumstances. The result is, you have a few months after a long list of divorces. I suggest to hon. Members that this Bill seeks to provide what I am sure is the desire of every Member of this Council — that the fabric of society and the foundation of the structure of society should be kept as secure as possible.

Question, put and agreed to.

Bill read a second time.

The Council resolved itself into Committee to consider the Bill clause by clause.

Council in Committee.

Clause 2 — Petition for dissolution of marriage.

Mr. DEBIDIN: I beg to move an amendment to section 9 (1) to read as follows: "has since the celebration of the marriage committed adultery or has been guilty of malicious desertion with or without adultery". In other words, I ask that the following words be added after

the word "adultery" — "or has been guilty of malicious desertion with or without adultery".

The CHAIRMAN: The hon. Member wants to restore the wording as in the original section.

Mr. DEBIDIN: That is the position. When we come to (b) I shall move the deletion of the entire clause .In moving this amendment I can hardly add anything more to what has been already said, except to say that the biggest point the hon. the Attorney-General seems to have been emphasizing over and over is the opportunity for reconciliation. That is the only point which he has been stressing greatly. But that point disappears when it is remembered that the very decision which is the bible or the foundation for the presentation of a petition for dissolution of marriage on the ground of malicious desertion demands that every attempt must be made at reconciliation, and a Judge of the Supreme Court zealously regards that and examines that aspect of every petition. Only two weeks ago I was the Solicitor in three undefended divorce matters and the Judge examined the petitioners carefully as to the efforts made for reconciliation. Although the matter is undefended evidence still has to be led on that. In other words, the argument of the hon. the Attorney-General does not seem to include or take in the human relationship at all, I respectfully submit, if he seems to suggest that the petition is presented immediately after the first quarrel. It does not always happen like that. If we are to assume that the two parties loved each other when they took the marriage vows, we must give them credit for also conducting themselves in a manner as reasonable people are expected to do. They will not rashly try to bring about an end to their own vows, but will make every attempt to see that everything goes on well and will give themselves every opportunity to continue their marriage and make their marriage life a success. Therefore when a petiton for dissolution is presented we are to assume that all efforts for reconciliation have been made already. The Judge is going to examine that and much reliance has to be placed on him in the exercise of his conscience as to whether he should grant the divorce or not,

As I said before and I repeat again, we have had a state of law which is in full practice in South Africa and Ceylon today, the Roman-Dutch law, about which we have had no complaint from the legal profession or the Judges and, I feel, it will be too drastic a change as contemplated. I do commend the very effective speech of the hon. the Seventh Nominated Member (Mr. Luckhoo) who made reference to the point as to the relationship or comparison between the practice in England and the practice here and urged that unless we are fully satisfied that we are justified in making a change. We feel that this relic of Roman-Dutch law should certainly be preserved. I ask that the amendment be accorded the approval of this Council.

Mr. SMELLIE: If the hon. Member for Eastern Demerara is moving the amendment that the words of the original section stand, I beg to second that.

The ATTORNEY-GENERAL: With regard to the case of Matthews and Matthews to which reference was made by several hon. Members in which the Judge enunciated the principles which have been used by the Court as a guide, my comment, as I have told hon. Members already, is, although the Judge deals with the principles underlying the whole question of malicious desertion, he goes on to deal with the point of desirability of having a fixed period. I would suggest to hon. Members this was a considered judgment. The case was heard in November and December, 1936, and judgment was delivered in April, 1937. Mr. Justice Verity gave very full consideration to this matter; after dealing with the principles of the law he made the following observations :—

> "It may be desirable that the law should prescribe, as in the case of a petition for judicial separation, some period beyond which alone can such a petition as the present be brought, not with the object of substituting statutory desertion for malicious desertion but for securing a reasonable period within which the erring spouse might have time for consideration and the aggrieved spouse have opportunity for seeking by other means

> just reconciliation. This is a view which in my opinion might well receive consideration in the proper quarters."

In other words, having dealt with the law as it stood, in his opinion the question of fixing a specific period which would enable an erring spouse to have a period for reconciliation should have the fullest consideration. As I suggest to you, this is the proper course. It is not because of the background of the Roman-Dutch law or that the Court has to give consideration to the circumstances to which reference is made, it is the parties themselves who settle their differences. Hon. Members are aware of the fact that the husband and wife themselves see reason and come off the fence. Sometimes their pride and their sensibilities are somewhat affected and they sit on the fence, but after a while reason asserts itself and they come together. I am sure it is known to hon. Members that after a lapse of time parties who might be heading for the Divorce Court, through good sense and advice have come together. I ask hon. Members before going into a long discussion to give consideration to what I suggest is a very important aspect of the ultimate objective—reconciliation, — the parties living together properly and the domestic life maintained and preserved.

Mr. DEBIDIN: It is only well, lest the minds of Members be prejudiced by what has been said by Chief Justice Verity, that I refer to the following passages of his judgment which seem to indicate the position where the intervals of time they were apart will be taken into consideration. In other words, desertion is not desertion simplex in this case or desertion without a cause, but if it lasts for three years it is sufficient. Malicious desertion has been defined by him and this passage follows what the hon. the Attorney General has just read from his judgment:

> "Nevertheless it is in accordance with what I conclude to be the fundamental principles of the divorce laws of this Colony that the respondent should be shown by evidence of his or her conduct definitely to have reached a final determination to repudiate the obligations of the marriage state, and also that it should be shown by evidence of the petitioner's conduct that such repudiation is against his or her will."

In other words, those are the two conditions which must be complied with before the petition is presented. But he goes on further to say:

> "While, therefore, it is not required by the laws of this Colony that there should be any defined period of desertion nor that legal proceedings should have been instituted to secure either the return of the deserting spouse or refusal of return in obedience to an order of the Court, yet in many cases the element of time will be one for consideration in ascertaining whether or not the desertion is in fact evidence of final repudiation."

In other words, in determining whether the desertion is malicious, if apart from the erring spouse's final determination of the marriage state there has been a separation for a year or two or in some cases well over three years, the Court would say "In view that there has been also a separation of so many years or months it seems clear that there is support to the allegation that there has been a definite determination of the marriage state. That is the law which has been accepted since Chief Justice Verity gave that judgment, and that is the law practised today with very great convenience and satisfaction in the Colony. We all know Chief Justice Verity to be a very strong religionist and President of the Y.M.C.A., and we quite appreciate the clarity of his judgment. He expressed the desire that there may be some measure, but he nevertheless, because it is not in the law, stipulated a condition and how it can be exercised. That is what the Court of Law is now exercising dependent on the Roman-Dutch law practice. I feel sure that the profession, having the interest of the community at heart and knowing what are the principles of law having studied the English practice and seen what the practice is, as a whole is against any innovation so far as malicious desertion is concerned

The CHAIRMAN: In the case of judicial separation on the ground of desertion, the desertion, as the law stands, must be two years or upwards.

Mr. DEBIDIN: Judicial separation

has some very grave consequences as the marriage still continues and the question of the children comes in. In England as well as here there are very few cases of judicial separation. As a matter of fact—I think other Members can bear me out — there is hardly any petition for judicial separation because of the practice of going to the Magistrate for maintenance. That is the practice every day in the Magistrates' Court. Under Chapter 9 of our laws we have a procedure by which a wife — it seems to give the wife only that privilege—can go to the Magistrates' Court and ask for maintenance of herself and children on the ground of desertion. There are one or two other grounds, such as cruelty or neglect to maintain the wife and children. We know, and the hon. the Attorney-General knows, that one of the reasons why there is a clustering up of work in Georgetown is the large number of these cases where all the facts have to be gone into just the same as in the Divorce Court. That is the first step they take in determining their matrimonial state of affairs. Very often the Magistrate tells them to try and make up their differences. After an order has been made, or not made, if the spouse discovers that there is no hope in the marriage and a petition for divorce is presented there is ample safeguard. I am glad you have raised this point. It is important. They do not worry to go to the Supreme Court on the ground of desertion because of the simple practice in the Magistrates' Court.

The CHAIRMAN: What I was wondering was why in the case of judicial separation you have a two years period of desertion before you can apply, but in the much more serious matter of divorce you need not wait for any period at all? With a judicial separation the parties can make up their differences without a divorce. It is far more simple a procedure than divorce. What is the point in having that provision in the case of judicial separation?

Mr. DEBIDIN: Desertion for judicial separation is desertion simplicita — desertion without any good cause. For instance, a wife goes to her mother to make a baby and does not return for two years. Malicious desertion is where there is hostility between the parties, tremendous fighting and one says he or she never loved the other and they would never go back to live together. Both agree to that and the Court would examine that. That is malicious desertion as against desertion simplicita.

The CHAIRMAN: Hon. Members must make up ther minds on this clause. I think the objects are good, but there is something to be said on both sides. I suppose it is this long period of three years which Members so strongly object to. If that is so, it can be reduced to what hon. Members consider reasonable.

Mr. LEE: If I may say something, I think what the hon. Member for Eastern Demerara said is that the whole profession is behind it.

The CHAIRMAN: We are not making law because the profession is against it. The provision is there for the interested parties.

Mr. LEE: The provision has worked from 1916 until now. The public understands it, and to change it now there will be hardship, because under the Summary Jurisdiction Ordinance there is quick provision for judicial separation. Even now the Amendment Ordinance of 1946 gives the Magistrate the right to make a temporary order for three months after separation in order to bring the parties together. The husband is compelled to support the wife and children during those three months on a Magistrate's order.

The CHAIRMAN: Members must decide it. It has been well argued on both sides.

The original paragraph 9 (1) (a) in the Bill put, and the Committee divided and voted as follows:-

For—Messrs. Farnum, Roth, the Attorney-General and the Colonial Secretary—4.

Against—Messrs. Luckhoo, Morrish, Carter, Smellie, Phang, Peters, Kendall, Debidin, Lee, Dr. Jagan, Dr. Gonsalves,

Dr. Nicholson and the Financial Secretary and Treasurer—13.

Motion lost.

The paragraph as amended to read.

"(a) has since the celebration of the marriage has been guilty of adultery or malicious desertion with or without adultery; or" put, and agreed to.

The ATTORNEY-GENERAL: I would suggest that the words be inserted after the word "marriage".

Paragraph (a) as amended agreed to.

Paragraph 9 (1) (b) —

Mr. DEBIDIN: I move the deletion of the entire paragraph 9 (1) (b).

Agreed to.

Paragraph 9 (1) (c) renumbered 9 (1) (b).

The Committee divided on paragraph 9 (1) (d) renumbered 9 (1) (c) and voted:

For—Messrs. Luckhoo, Morrish, Carter, Smellie, Phang, Kendall, Debidin, Farnum, Roth, Lee, Drs. Jagan, Gonsalves and Nicholson, the Financial Secretary and Treasurer, the Attorney-General and the Colonial Secretary—16.

Against — Mr. Peters — 1.

Mr. PETERS: I should have called attention to something before the division was taken.

The CHAIRMAN: The hon. Member cannot do it now but will have an opportunity to do so on the third reading.

The Council resumed.

Mr. PETERS: I desire to call the attention of the Council to the fact that in the Summary Jurisdiction (Magistrates) Ordinance, Chapter 9, reference is made to "persistent cruelty". I feel that cruelty, as referred to in this Bill, should also be persistent cruelty. I think that when we are making cruelty one of the grounds for divorce we should state the degree of cruelty so as to make it easier for the Court to decide the issue, and also for petitions to be presented.

The ATTORNEY-GENERAL: *In Latey on Divorce* this is what is said on the question of legal cruelty:

> "Whether or not there has been an act of cruelty in the sense of the matrimonial law is a question of fact. There is no essential difference between the definitions of the Ecclesiastical Courts and the post—1857 matrimonial Courts of legal cruelty in marital sense. The authorities were fully considered by the Court of Appeal and the House of Lords in *Russell v. Russell* (*s*), and the definition now prevailing in the Divorce Court is as follows:—
>
> Conduct of such a character as to have caused danger to life, limb, or health, bodily, or mental, or as to give rise to a reasonable apprehension of such danger (t).
>
> Lord Stowell's proposition in *Evans v. Evans* (*u*) was approved by the House of Lords, and may be put thus: before the Court can find a husband guilty of legal cruelty towards his wife, it is necessary to show that he has either inflicted bodily injury upon her, or has so conducted himself towards her as to render future cohabitation more or less dangerous to life, or limb, or mental or bodily health.
>
> He was careful to avoid any definition of cruelty, but he did add: "The causes must be grave and weighty, and such as to show an absolute impossibility that the duties of married life can be discharged." But the majority of their Lordships in *Russel v. Russell* (1897) (*supra*) declined to go beyond the definition set out above.
>
> The converse applies where the husband charges the wife with cruelty taking into account the relative physical strength of a man and a woman."

The PRESIDENT: Is the hon. Member satified with the explanation?

Mr. PETERS: Yes, sir.

The ATTORNEY-GENERAL: I beg to move that the Bill be now read a third time and passed.

Dr. NICHOLSON seconded.

Question put, and agreed to.

Bill read a third time and passed.

The Council was then adjourned until the following day at 2 p.m.